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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 697

IN THE MATTER OF
CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

DEBTOR.

CLAUDE A. ROTH, TRUSTEE, CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Petitioner,

vs.

LILLIAN CARLSON, AS ADMINISTRATRIX, ETC., OF THE ESTATE OF CHARLES A. ANDERSON, DECEASED,

Respondent.

BRIEF FOR RESPONDENT.

ROY F. HALL,
Rockford, Illinois,
Attorney for Respondent.

THE DUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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ARGUMENT.

To the Honorable Chief Justice and Associated Justices of the Supreme Court of the United States:

The petitioner seeks to review the decision of the Circuit Court of Appeals, Seventh District, on the grounds that:

1. The Circuit Court of Appeals has decided an im-

portant question of local law in conflict with applicable local decisions.

2. The Circuit Court of Appeals rendered a decision in conflict with the decision of another Circuit Court of Appeals in respect of Rule 53 (e) (2).

These contentions of the petitioner will be considered in the order in which they were presented by the petitioner.

I.

The Circuit Court of Appeals Did Not Decide an Important Question of Local Law in Conflict With the Applicable Decisions of the State of Illinois.

The petitioner has not clearly stated the question before the Circuit Court of Appeals for determination.

The District Court held that the burden of proof was on this respondent (called the claimant in the order of the District Court) "to prove that Charles A. Anderson was alive during all or part of the seven year period." (R. 93.)

The Circuit Court of Appeals decided that the burden of proof was on the petitioner (R. 112) (called the appellee in the opinion handed down by the Circuit Court of Appeals).

All the cases cited by the petitioner recognize the validity of the rule enunciated by the Circuit Court of Appeals. (See quotations, page 15 of his petition.)

Implicit in the argument of the petitioner is a recognition of this rule. He says: "one desiring to show death before the expiration of the seven-year period may do so by proving intervening facts." (Page 14 of the Petition.)

II.

Rule 53 (e) (2) of the Rules of Civil Procedure Was Not Involved in the Order of the District Court.

The District Court decided that the burden of proof was on this respondent to show when the decedent died. By so doing, it obviated the necessity of passing upon the findings of the Master, who found that the proof introduced by the petitioner to overcome the presumption of the continuance of life of the decedent during the seven-year period was inadequate. When the Circuit Court of Appeals decided that the District Court erred in respect of where the burden of proof was, it was confronted with the question of whether it should reverse the District Court.

If the findings of the Master were clearly erroneous (in that the Master determined that the proof offered to overcome the presumption of the continuance of life was inadequate) then it would have been futile to reverse the District Court notwithstanding that it had reached a correct conclusion, by erroneous reasoning. But the Circuit Court of Appeals after considering the proof, determined that the Master's findings were not "clearly erroneous." Only then did it determine to reverse the District Court.

The basis of the petitioner's complaint in respect of Rule 53 (e) (2) is that decision of the Circuit Court of Appeals was erroneous in that it precluded the District Court from substituting its inferences from facts in evidence for those of the Master.

There is nothing in the opinion of the Circuit Court of Appeals that would indicate that a District Court cannot substitute its inferences for those of a Master.

The District Court had not substituted its findings of

fact for those of the Master. It substituted its notion of where the burden of proof was. It thus obviated a determination of whether the Master's findings in this regard were or were not "clearly erroneous."

The principle that a District Court may substitute its findings for those of a Master may, for the purpose of determining this case, be conceded. It is purely academic.

For the foregoing reasons we urge that the petition for the writ of certiorari be denied.

Respectfully submitted,

ROY F. HALL,
Attorney for Respondent.